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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,972	03/24/2004	Tomasz Ondrusz	006422.00006	4460

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EXAMINER

FRISBY, KESHA

ART UNIT	PAPER NUMBER
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3714

MAIL DATE	DELIVERY MODE
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08/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/807,972	Applicant(s) ONDRUSZ ET AL.	
	Examiner Kesha Frisby	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-55 is/are pending in the application.
- 4a) Of the above claim(s) 1-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-20, drawn to physical activity, classified in class 434, subclass 247.
- II. Claims 21-33, drawn to nutrition, classified in class 434, subclass 127.
- III. Claims 34-40, drawn to performance, classified in class 434, subclass 238.
- IV. Claims 41-44, drawn to injury, classified in class 434, subclass 262.
- V. Claims 45-55, drawn to devising a training scheme, classified in class 434, subclass 247.

The inventions are distinct, each from the other because of the following reasons:

1. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination II has separate utility such as a database comprising information regarding the nutritional content of different foodstuffs. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the

allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

2. Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination III has separate utility such as a database for storing information regarding a goal of a user. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

3. Inventions I and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in

scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination IV has separate utility such as a database for storing information regarding an injury sustained by a user. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

4. Inventions I and V are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination as claimed does not require wherein the database comprises information regarding the relevance of different physical activities. The subcombination has separate utility such as a

database comprising information regarding the relevance of different physical activities to fitness categories.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

5. Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination III has separate utility such as a database for storing information regarding a goal of a user. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a

claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

6. Inventions II and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination IV has separate utility such as a database for storing information regarding an injury sustained by a user. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

7. Inventions II and V are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP §

806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination as claimed does not require wherein the database comprises information regarding the nutritional content of foodstuffs. The subcombination has separate utility such as a database comprising information regarding the nutritional content of different foodstuffs.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

8. Inventions III and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination IV has separate utility such as a database for storing information regarding an injury sustained by a user. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found

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allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

9. Inventions III and V are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination as claimed does not require wherein the database stores information regarding a short term goal. The subcombination has separate utility such as a database for storing information regarding a goal of a user.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or

includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

10. Inventions IV and V are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination as claimed does not require wherein the server is operable to receive information from the user specifying the location of an injury. The subcombination has separate utility such as a database for storing information regarding an injury sustained by a user.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

10. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

11. During a telephone conversation with Chad Hendricks on 8/13/2007 a provisional election was made without traverse to prosecute the invention of Group V, claims 45-55. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-44 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

12. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Priority

11. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in the United Kingdom on 24 March 2003. It is noted, however, that applicant has not filed a certified copy of the Application No. 0306734.5 application as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. **Claim 45-49, 51, 52, 54 & 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (U.S. Publication Number 2003/0027688) in view of Petrus (U.S. Patent Number 7.136.820).**

Referring to claims 45 & 54, Gordon et al. discloses first computer means for processing data (computer 110); wherein: each sports person using the system inputs a selection of a sport (paragraph 0016) and, in response to enquiries generated by the first computer means, information concerning his/her physiological profile (paragraph 0015); and from this comparison formulates a training regime which is relayed to the sports person (generating a customized exercise program). *Gordon et al. does not disclose which has a database which stores for each of a plurality of sports a record of an idealized physiological profile and the first computer means compares the physiological profile input by each sports person with the idealized physiological profile for the relevant sport.* Gordon et al. does disclose a database for storing measurements and setting up a profile for each user (paragraph 0013), can be related to a sport person (abstract) and a customized exercise program may include a nutrition program portion (paragraph 0080). However, Petrus teaches having a database which stores for each of a plurality of health profiles a record of an idealized physiological profile (a health

profile for a person of the consumer's age and health history background) and compares the physiological profile input by each person with the idealized physiological profile (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include storing ideal health profiles and having the ability to compare a person's health information to an ideal health profile, as disclosed by Petrus, incorporated into Gordon et al. so that an individual will be able to determine their nutritional needs in comparison to an ideal healthy person/profile. Basically, the individual is able to determine the nutritional needs needed to become more like the ideal healthy person/profile.

Referring to claim 46, Gordon et al., as modified by Petrus, discloses wherein: the first computer is connected via a telecommunications network to a plurality of remotely located computer means (Fig. 1 & the associated text of Gordon et al.); and each sports person uses one of the plurality of remotely located computer means to input data to the first computer means via the telecommunications network (paragraph 0013 of Gordon et al.) and to receive enquiries (computer 110 of Gordon et al.) and the formulated training regime from the first computer means via the telecommunications network (computer 110 & generated customized exercise program of Gordon et al.).

Referring to claim 47, Gordon et al., as modified by Petrus, discloses wherein: the first computer means for each sports person scales the stored idealized physiological profile for the selected sport having regard to the weight of the sports person and compares the input physiological profile with the scaled identical physiological profile when formulating the training regime (paragraphs 0014 & 0080-0082 of Gordon et al.).

Referring to claim 48, Gordon et al. discloses wherein: the first computer means for each sports person scales the stored idealized physiological profile for the selected sport having regard to the gender of the sports person and compares the input physiological profile with the scaled idealized physiological profile when formulating the training regime (paragraph 0015 of Gordon et al.).

Referring to claim 49, Gordon et al., as modified by Petrus, discloses wherein: the first computer means for each sports person scales the stored idealized physiological profile for the selected sport having regard to the age of the sports person and compares the input physiological profile with the scaled idealized physiological profile when formulating the training regime (paragraph 0015 of Gordon et al.).

Referring to claim 51, Gordon et al., as modified by Petrus, discloses wherein: the training regime formulated by the first computer means comprises recommendations for training session frequency (paragraph 0019 of Gordon et al.).

Referring to claim 52, Gordon et al., as modified by Petrus, discloses wherein: the training regime formulated by the first computer means comprises recommendations for heart rate during training (paragraph 0018 of Gordon et al.).

Referring to claim 53, Gordon et al., as modified by Petrus, discloses wherein: each sports person inputs periodically, in response to enquiries generated by the first computer means, data to establish a psychological profile for the sports person (paragraph 0015 of Gordon et al.); and the first computer means compares each input psychological profile for each sports person with a stored base psychological profile for the sports person (abstract of Petrus) and dependent on the comparison can modify the

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training regime formulated by the first computer means (paragraph 0019 of Gordon et al.).

Referring to claim 55, Gordon et al. discloses first computer means for processing data (computer 110); wherein each sports person using the system inputs, in response to enquiries generated by the first computer means, information concerning his/her physiological profile (paragraph 0015); each sports person using the system can vary the pre-programmed physiological profile by inputting a target or targets selected from options provided by the first computer means (paragraphs 0022-0050); and from this comparison formulates a training regime which is relayed to the sports person (generating a customized exercise program). *Gordon et al. does not disclose which has a database which stores a record of a pre-programmed physiological profile and the first computer means compares the physiological profile input by each sports person with the varied physiological profile selected by the sports person.* Gordon et al. does disclose a database for storing measurements and setting up a profile for each user (paragraph 0013), can be related to a sport person (abstract) and a customized exercise program may include a nutrition program portion (paragraph 0080). However, Petrus teaches having a database which stores a record of an pre-programmed physiological profile (a health profile for a person of the consumer's age and health history background) and compares the physiological profile input by each person with the varied physiological profile selected by the individual (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include storing ideal health profiles and having the ability to compare a person's health

information to an ideal health profile, as disclosed by Petrus, incorporated into Gordon et al. so that an individual will be able to determine their nutritional needs in comparison to a pre-programmed healthy person/profile. Basically, the individual is able to determine the nutritional needs needed to become more like pre-programmed healthy person/profile.

14. Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al./Petrus and further in view of Blau et al. (U.S. Patent Number 6,176,241).

Referring to claim 50, Gordon et al. discloses a system as claimed in claim 45. *Gordon et al. does not wherein: each stored record of an idealized physiological profile comprises measurements taken from the set of: maximum capacity to transport oxygen to tissues; percentage of maximum oxygen transport capacity that may be maintained without accumulation of lactate; greatest weight that can be lifted once; maximum power; maximum number of sit-ups performed without rest; maximum number of push-ups performed without rest; maximum number of crunches performed without rest; and local muscle endurance; and the first computer means generates enquiries relayed to the sports person which require data matching the measurements stored for the idealized physiological profile.* However, Blau et al. teaches wherein: each stored record of an idealized physiological profile comprises measurements taken from the set of: maximum capacity to transport oxygen to tissues ($VO_2\text{max}$); percentage of maximum oxygen transport capacity that may be maintained without accumulation of lactate; greatest weight that can be lifted once; maximum power; maximum number of sit-ups

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performed without rest; maximum number of push-ups performed without rest; maximum number of crunches performed without rest; and local muscle endurance; and the first computer means generates enquiries relayed to the sports person which require data matching the measurements stored for the idealized physiological profile. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the measurements, as disclosed by Blau et al., incorporated into Gordon et al./Petrus in order to formulate exercise regimens based on these measurements.

Citation of Pertinent Prior Art

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Reitman et al. (U.S. Patent Number 6,461,162) teaches a method for creation of a center for athletic performance enhancement.

Greenberg (U.S. Publication Number 2003/0069757) teaches systems and methods for designing and delivering a nutritional supplement regime.

Dardik et al. (U.S. Patent Number 7,151,959) teaches systems and methods for assessing and modifying an individual's physiological condition.

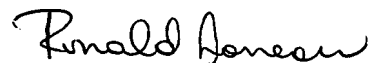
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kesha Frisby whose telephone number is 571-272-8774. The examiner can normally be reached on Mon. - Wed. 7-3pm & Thurs. - Fri. 7-3:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ronald Laneau
Primary Patent Examiner
Art Unit 3714



Kyf 8/16/2007

8/18/07